

01507

STATE COMMITTEE OF PSYCHOLOGISTS
State of Missouri

STATE COMMITTEE OF
PSYCHOLOGISTS,

vs.

JIM RAUM,

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AHC Case No. 07-0479 PS

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

In a Decision dated May 7, 2008, the Administrative Hearing Commission found cause for the State Committee of Psychologists to discipline the psychologist license of Jim Raum. The Committee has received the record of proceedings before the Commission, and must now determine what discipline, if any, is appropriate in the matter, pursuant to §§ 610.110 and 337.035.2 RSMo. The matter came on for hearing, pursuant to notice, at the Committee's regular meeting on September 19, 2008.

The Committee was represented by Assistant Attorney General Michael Cherba. Although notified of the date, time and place of the Hearing neither Raum nor any person representing him appeared at the hearing. Division of Professional Registration Senior Legal Counsel David Barrett served as the Committee's legal advisor at the hearing, during deliberations, and in the preparation of this order.

Testimony was heard, evidence was received, and the argument of counsel was heard. Having considered the matter, the Committee orders the psychologist license of Jim Raum revoked.

Findings of Fact

1. The State Committee of Psychologists is an agency of the State of Missouri created and established pursuant to § 337.050 RSMo. for the purpose of executing and enforcing the provisions of §§ 337.010-.090 RSMo.

2. Jim Raum is licensed by the Committee as a psychologist, license number ~~01507~~ ⁰¹⁵⁰⁷. The license was current and active at the times of the events leading to these proceedings. It did expire on January 31, 2008.

3. The Administrative Hearing Commission's decision of May 7, 2008, is incorporated herein by reference as though fully set out. Generally, the Commission found that Raum is subject to discipline because 1) during the course of supervising a provisionally licensed professional counselor he (a) violated the supervision agreement and (b) used the personal property of, made unwanted sexual comments and advances towards, and sexual assaulted the person he was professionally supervising; (2) his professional relationship with the supervisee was exploitive in violation of the Ethical Rules of Conduct; (3) he failed to store, dispose of, and properly safeguard confidential client information; and (4) he violated the professional trust and confidence of both his supervisee and his patients.

4. Raum was served notice of this hearing by certified mail; the return receipt includes his signature.

Conclusions of Law

5. The Committee has jurisdiction in this proceeding pursuant to §§ 610.110 and 337.035.3 RSMo. to determine the appropriate discipline, if any, to be imposed on Raum's license.

Decisions and Orders

Having fully considered the matter, it is the order of the State Committee of Psychologist that the license of Jim Raum should be and is hereby **REVOKED**.

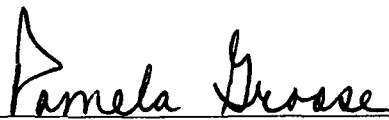
Raum shall desist from the practice of psychology, and deliver to the Committee's Executive Director all evidence of licensure, including wall hangings and pocket cards, within ten days of the date of this order. If Raum cannot locate his wall hangings and pocket cards, he shall file within the same period an affidavit to that effect.

Raum shall promptly arrange for the transfer of the care and records of any patients to an appropriately licensed mental health care provider. Raum is cautioned that he should maintain records demonstrating the proper discharge of these responsibilities, for should he ever again apply for licensure the Committee will investigate his compliance with the ethical requirements underlying this order.

The Committee will maintain this order as an open and public record of the Committee as provided in Chapters 337, 610, and 620, RSMo.

Entered this 5th day of December, 2008.

STATE COMMITTEE OF PSYCHOLOGISTS



Pamela Groose
Executive Director

Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE
OF PSYCHOLOGISTS,

Petitioner,

vs.

JIM RAUM,

Respondent.

No. 07-0479 PS

DECISION

Jim Raum is subject to discipline because he (1) failed to abide by the terms of a supervision agreement with Victoria Hammond, (2) used Hammond's property for his personal benefit, (3) made repeated unwanted sexual comments and advances toward Hammond, and (4) sexually assaulted Hammond.

Procedure

On April 6, 2007, the State Committee of Psychologists ("the Committee") filed a complaint seeking to discipline Raum. Raum was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on April 12, 2007.

On December 12, 2007, we held a hearing. Assistant Attorney General Jonathan H. Hale represented the Committee. Although notified of the time, place, and date of the hearing, neither

Raum nor anyone representing him appeared. The matter became ready for our decision on March 20, 2008, the date Raum filed his brief.

Findings of Fact

1. Raum is licensed by the Committee as a psychologist. His license was issued on November 12, 1991, expired on January 31, 2008, and was active at all relevant times.
2. Raum practiced psychology at his office, located at 101 W. Highway 32, Suite 4, Licking, Missouri, 65542.
3. Raum entered into a supervisory relationship with Hammond, a Provisionally Licensed Professional Counselor, in April 2003 and continuing until December 2003.
4. Under their agreement, Hammond, in addition to her counseling duties, was to: “[p]ay 50% of all overhead expenses associated with operation of the practice” and to “[c]omplete approximately 75% of the day-to-day tasks associated with operation of the business.”¹ The overhead expenses consisted of rent and phone bills and advertising.
5. Under their agreement, Raum, in addition to his supervisory duties, was to “[p]rovide a portion of office and waiting room furniture for Victoria Hammond”² and to disburse to Hammond revenue received from the services she provided.
6. Throughout the supervisory relationship, the Missouri Division of Vocational Rehabilitation assisted Hammond financially and otherwise, including reimbursement for her share of the office expenses.
7. In April and May 2003, due to Raum’s inability to pay his share of the rent, Hammond paid the rent in full. Raum failed to reimburse Hammond for his half of the April and May 2003 rent.

¹Pet. Ex. B.

²*Id.*

8. Raum billed Medicaid for a client that Hammond worked with, but he failed to reimburse her for those services.

9. During the supervisory relationship, Hammond spent 50 or 60 hours helping build and paint the waiting room in Raum's office. She was never compensated for this work. Hammond was never given office space.

10. Starting in or around August 2003, Raum did not have a personal residence, and he began sleeping in his office.

11. Starting in or around August 2003 and continuing through December 2003, Raum stored his personal belongings in Hammond's horse trailer located on her property. At Raum's request, Hammond provided food for Raum, washed his clothes, and provided hot water so he could bathe in the horse trailer. Outside of the trailer, Raum set up a cooking area with a table, a propane stove, and a propane grill.

12. During the supervisory relationship, Raum sexually harassed Hammond repeatedly with jokes of a sexual nature and requests for sexual favors.

13. In October or November of 2003, Raum sexually assaulted Hammond by drugging her, removing her shirt, and masturbating on her breasts. After Raum left her, Hammond was lucid, but unable to move for several hours.

14. Hammond obtained a restraining order against Raum based on the sexual assault and subsequent threatening phone calls received from Raum.

15. During the supervisory relationship, Raum placed feed bags containing confidential client information, including Medicaid claim forms from 2003, in a horse trailer on Hammond's property. The horse trailer was not enclosed and had no lock. Raum put plastic over the top, but the side door opened. Hammond observed papers blowing around her property. Raum destroyed some of the records by taking the feed bags to a clearing and setting them on fire.

16. After Hammond terminated the relationship, the sacks remained on her property, and Hammond picked up some of the documents that were blown across her property. Raum made no arrangements to destroy or otherwise safeguard the confidential information.

Conclusions of Law

We have jurisdiction to hear the complaint.³ The Committee has the burden of proving that Raum has committed an act for which the law allows discipline.⁴

In his brief, Raum attacks Hammond's testimony and the Committee's investigation. He states that Hammond is guilty of fraud and has a history of complaints similar to the one made against him. Raum did not attend the hearing on this complaint. His post-hearing brief contains information that he might have offered through testimony at the hearing. He could have challenged the evidence presented by the Committee and presented his own case, but he did not. Because proceedings before this Commission are subject to the rules of evidence, we cannot consider his comments as evidence of facts in this case. Evidence from which we make findings of fact was presented at the hearing and cannot be changed in post-hearing briefs.⁵

Even if we considered Raum's arguments, this Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.⁶ We determined that Hammond is a credible witness and have made our findings of fact accordingly.

The Committee argues that there is cause for discipline under § 337.035:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any . . . license required by this chapter . . . for any one or any combination of the following causes:

³Section 621.045, RSMo Supp. 2007. Statutory references, unless otherwise noted, are to RSMo 2000.

⁴*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁵Section 536.070(1).

⁶*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

I. Incompetence, Misconduct, Gross Negligence,

Fraud, Misrepresentation, Dishonesty – Subdivision (5)

When referring to an occupation, incompetence relates to the failure to use "the actual ability of a person to perform in that occupation."⁷ It also refers to a general lack of, or a lack of disposition to use, a professional ability.⁸ Misconduct is "the willful doing of an act with a wrongful intention[;] intentional wrongdoing."⁹ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.¹⁰

⁷Section 1.020(8).

⁸*Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004); *Forbes v. Missouri Real Estate Comm'n*, 798 S.W.2d 227, 230 (Mo. App., W.D. 1990).

⁹*Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

¹⁰744 S.W.2d at 533.

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹¹ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.¹² Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹³

The Committee argues that Raum's (1) failure to pay his share of the rent and other expenses according to the supervision agreement, (2) failure to provide adequate office space for Hammond's practice, (3) failure to reimburse Hammond pursuant to the terms of the supervision agreement for the professional services she performed, (4) use of Hammond's property for his personal benefit, (5) repeated unwanted sexual comments and advances toward Hammond and (6) sexual assault of Hammond are each grounds for discipline under § 337.035.2(5) in that each constitutes incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a psychologist.

Raum's failure to abide by the terms of the supervision agreement constitutes misconduct, incompetence, fraud, misrepresentation and dishonesty. Because the mental states for misconduct and gross negligence are mutually exclusive, we find no cause to discipline for gross negligence.

Raum's use of personal property, unwanted sexual comments and advances towards, and sexual assault of, the person he was professionally supervising constitute incompetence and misconduct. Raum is subject to discipline under § 337.035.2(5).

II. Violation of Regulation/Unethical Conduct – Subdivisions (6) and (15)

Regulation 20 CSR § 2235-5.030 sets forth the "Ethical Rules of Conduct" for psychologists and states:

¹¹*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹²MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹³*Id.* at 794.

(1) General Principles.

(A) Purpose. The ethical rules of conduct constitute the standards against which the required professional conduct of a psychologist is measured.

* * *

(D) Violations. A violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action or denial of either original licensure, reinstatement or renewal of licensure.

Sections (4) and (9) of this regulation deal with the psychologist's records and confidential information:

(4) Maintenance and Retention of Records.

* * *

(B) To meet the requirements of these rules . . . the psychologist shall assure that all data entries in the professional records are maintained for a period of not fewer than five (5) years after the last date of service rendered, or not less than the time required by other regulations, if that is longer.

1. The psychologist shall store and dispose of written, electronic and other records in such a manner as to ensure their confidentiality. The psychologist shall maintain the confidentiality of all psychological records in the psychologist's possession or under the psychologist's control except as otherwise provided by law or pursuant to authorization of a client specifically requesting or authorizing release or disclosure of the client's psychological records[.]

* * *

(9) Protecting Confidentiality of Clients.

* * *

(B) Safeguarding Confidential Information. The psychologist shall safeguard the confidential information obtained in the course of practice, teaching, research or other professional duties. . . .

Sections (6) and (8) of this regulation deal with supervisees:

(6) Multiple Relationships.

* * *

(C) Prohibited Relationships.

* * *

3. Prohibited exploitation in professional relationships.

The psychologist shall not exploit, sexually or otherwise, his/her professional relationship with . . . supervisees.

* * *

(8) Welfare of Supervisees, Clients, Research Subjects and Students.

(A) Welfare of Supervisees and Students. The psychologist shall not harass or exploit a supervisee or student in any way – sexually, financially or otherwise. . . .

A. Supervisee

The Committee argues that Raum's (1) failure to pay his share of the rent and other expenses according to the supervision agreement, (2) failure to provide adequate office space for Hammond's practice according to the supervision agreement, (3) failure to reimburse Hammond for the professional services she performed according to the supervision agreement, (4) use of Hammond's property for his personal benefit, (5) repeated unwanted sexual comments and advances toward Hammond and (6) sexual assault of Hammond are each grounds for discipline under § 337.035.2(6) and (15).

We agree with the Committee that each of these acts constitutes exploitation of Raum's professional relationship with a supervisee in violation of the Ethical Rules of Conduct as set forth in 20 CSR § 2235-5.030(6)(C)3 and (8)(A). Raum is subject to discipline under § 337.035.2(6) and (15).

B. Records

By leaving documents containing confidential client information on Hammond's property as described in our Findings of Fact, Raum is subject to discipline under § 337.035.2(6) and (15) in that he failed to store, dispose of, and properly safeguard confidential client information in violation of the Ethical Rules of Conduct as set forth in 20 CSR § 2235-5.030(4)(B)1 and (9)(B). Raum is subject to discipline under § 337.035.2(6) and (15).

III. Violation of Professional Trust – Subdivision (13)

Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹⁴ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹⁵

Raum had a relationship of professional trust or confidence with his clients to safeguard confidential client information. Raum's conduct as described above violated that trust or confidence.

Raum had a relationship of professional trust or confidence with Hammond in that she relied on Raum as a licensed psychologist to provide services in compliance with the statutes, regulations and standard of care governing that profession, including the supervision that Raum provided to Hammond. Raum's conduct as described above violated Hammond's trust or confidence. Raum is subject to discipline under § 337.035.2(13).

Summary

Raum is subject to discipline under § 337.035.2(5), (6), (13), and (15).

SO ORDERED on May 7, 2008.



JOHN J. KOPP
Commissioner

¹⁴*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹⁵*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).